

REMARKS

I. Introduction

Claims 15 and 18 to 28 are pending in the present application. In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

II. Rejection of Claims 15 and 18 to 28 Under 35 U.S.C. § 102(e)

Claims 15 and 18 to 28 were rejected under U.S.C. § 102(e) as anticipated by U.S. Patent No. 7,063,075. It is respectfully submitted that Berger et al. do not anticipate these claims for at least the following reasons.

U.S. Patent No. 7,063,075 states that it is the national stage of PCT/DE02/03715, having an international filing date of October 1, 2002. According to the face of U.S. Patent No. 7,063,075, PCT/DE02/03715 was published as WO 03/038267, which was published in German. Thus, since PCT/DE02/03715 was filed after November 29, 2000 and was not published in English, U.S. Patent No. 7,063,075 does not constitute prior art against the present application under 35 U.S.C. § 102(e). In this regard, the Examiner's attention is respectfully directed to M.P.E.P. § 706.02(f)(1)(I)(2):

If the international application was filed on or after November 29, 2000, but did **not** designate the United States or was **not** published in English under PCT Article 21(2), do **not** treat the international filing date as a U.S. filing date for prior art purposes. In this situation, do **not** apply the reference as of its international filing date, its date of completion of the 35 U.S.C. 371(c)(1), (2) and (4) requirements, or any earlier filing date to which such an international application claims benefit or priority. The reference may be applied under 35 U.S.C. 102(a) or (b) as of its publication date, or 35 U.S.C. 102(e) as of any later U.S. filing date of an application that properly claimed the benefit of the international application (if applicable). (emphasis added).

Moreover, it should be noted that the present application claims priority to German Application No. 102 56 668.2, filed on December 4, 2002, a certified English-language translation of which is submitted herewith. The December 4, 2002 priority date is before the May 8, 2003 publication date of WO 03/038267.

In view of the foregoing, withdrawal of this rejection is respectfully requested.

III. Conclusion

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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By: /Clifford A. Ulrich/ (Reg. No. 42,194) for:
Gerard A. Messina
Reg. No. 35,952

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200
CUSTOMER NO. 26646